

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

HILARDO N. JUAREZ,

Plaintiff,

vs.

Civ. No. 00-447 WJ/WWD

ELKHORN OPERATING CO., INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon the Opposed Motion to Compel Supplementation to Plaintiff's Initial Disclosures and Defendant's Requests for Production of Documents [docket no. 64] filed April 3, 2002. Defendant contends that Plaintiff has failed to provide "all documents relating any income you [the Plaintiff] have received since your resignation from Elkhorn, included but not limited to" numerous enumerated documents. In the Initial Pre-Trial Report filed as an Order in this cause, the time for filing discovery motions was set as "no later than" February 12, 2001. In the Pre-Trial Order filed April 18, 2001, the parties indicated that discovery was completed. In response to the question "Are there any discovery matters of which the Court should be aware," the answer was "Not at this time." A year has passed and there is no question as to the duty of the Plaintiff to supplement his responses to the discovery seeking information as to his earnings. It is difficult to determine whether adequate materials have been submitted for the time involved. Accordingly, I will require Plaintiff to submit to the undersigned copies of all materials concerning his earnings which are in his

possession or available to him through the exercise of due diligence for the period from April 18, 2001 to May 31, 2002. These materials shall also be sent to Defendant. This production shall be made on or before June 14, 2002. After I inspect the submitted materials I will make a report and recommendation to the trial judge as to whether he should bar testimony as to wage loss damages for any period in this interim where the record of earnings is not sufficiently complete to determine what mitigation of those damages has occurred.

This cause shall proceed in accordance with the foregoing

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE